Supreme Court, U.S.
FILED
08-609 SEP 2 - 2008
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Dr. ALVIN KANOFSKY , PhD. - PETITIONER-APPELLANT

Vs.

COMMISSIONER OF INTERNAL REVENUE SERVICE

RESPONDENT-APPELLEE

MR.MICHAEL MUKASEY – ATTORNEY GENERAL

Mr. RICHARD FARBER, ESQ.
Mr. JOHN SCHUMANN, ESQ.

Attorneys Tax Division, Department of Justice
Post Office Box 502
Washington, D.C.

ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS FOR CASE 07-1860 IN PHILADELPHIA

DR. ALVIN S. KANOFSKY , Pro-Se
229 E. CHURCH STREET
BETHLEHEM, PA. 18018
610 -867-8064

INTRODUCTION

Appellant claims that he engaged in business activity during the period from 1996-2000.

He pursued real estate development, high technology research and development, high technology consulting, whistle blowing activity, and starting up independent businesses.

He was thwarted in this activity by various entities – operating under color of law, such as various non-profits in the area, and city and state agencies.

The IRS after examining the various tax returns for this period determined that there were substantial deficiencies for the first three years, but small deficiencies for the last two years. Kanofsky's activities were essentially identical for the entire period.

Kanofsky appealed these deficiencies to the Tax Court and a trial was held on March 15 of 2005. He was denied motions to delay the trial to present additional witnesses who would testify as to the thwarting of his activities and the fraud and corruption present. As well, he made numerous affirmative defense claims of fraud and corruption, all of which the court ignored.

As well, the IRS attorneys and the Tax Court blocked his presenting evidence of his business activity, citing primarily the 14 day rule set by the court. This was in

spite of Kanofsky presenting voluminous documents for evidence well before the 14 day cutoff period, and then finally presenting `the winnowed down documents just within the 14 day cutoff period. The Tax Court, after some minor adjustments ruled against Kanofsky's claims of being in business for the period during the first three years, but allowed that he was in business in the last two years. The court, as well, totally disregarded his claims of fraudulent and corrupt entities blocking his activity, and any affirmative defenses. In most instances, the court supported the IRS claims because of lack of evidence – the documents it refused to allow in. Also, the witnesses that Kanofsky wanted to call to support his claims.

As well, the court would not allow Kanofsky's motion to open the records of the UPS case for income tax evasion – the largest IRS case to date and one which had been settled. Kanofsky wanted to open the UPS records because one of the main entities blocking Kanofsky's activities is Ms. Marlene (Linny) Fowler, whose father and Uncle were head of UPS during the period under IRS consideration.

As well, there were additional documents, of new matter further supporting Kanofsky's contention of Fraud and Corruption, as for example cases against local and Philadelphia entities and individuals for fraud and corruption involving government activities.

With Regard to the Whistleblowing activity, Kanofsky presented numerous instances of fraud and corruption where whistleblowing was valid. The most

prominent instance is the case of the University of Medicine and Dentistry of New Jersey (UMDNJ), where Kanofsky was the first and most visible whistleblower in pursuing a Federal Case against UMDNJ (Eventually, Supreme Court Case 02-01818) for discharging his older brother who was in charge of monitoring the billing records of UMDNJ. After many years of litigation, in the new matter, UMDNJ was finally indicted by the FBI and Department of Justice and accepted a Plea Agreement of Deferred Prosecution, where Judge Herbert Stern was installed as a monitor of the University's activities over a two year period. This is the largest fraud and corruption case ever of a university in this country.

In post trial motions and submissions Kanofsky tried repeatedly to have the denied evidence entered into the record, as well as new matter which further supported his claims of fraud and corruption. This material was finally accepted as part of his Motion for Reconsideration of the decision, but it certainly was not considered by the court. As well, the initial IRS attorney, Mr. Jackson, for the case apparently left the IRS service, presumably for malfeasance. Eventually, the court ruled against Kanofsky on November of 2005.

Kanofsky appealed this ruling to the Third Circuit Court of Appeals, even citing new instances of fraud and corruption by private and public entities. The Appeals court nevertheless once more ruled against Kanofsky, and then denied En Banc his Petition for Reconsideration of the ruling. The court ruled that Kanofsky had not presented

any evidence to support his claims, and that he lacked credibility. (and had even made incendiary claims). This is now an appeal from that ruling.

In the period from the when the appeals court denied Kanofsky's appeal to the present, the entire state democratic party apparatus including several legislators, have been indicted for fraud and corruption. It is worth noting that the head of the state democratic party T.J. Rooney resides and works in Bethlehem, and that Governor Rendell has numerous personal and political ties to Bethlehem. Among many other fraudulent and corrupt activities were those of State Senator Vincent Fumo, the most powerful politician in the legislature who was indictedfor fraud and corruption, and the granting of a state gambling license to an alleged Scranton, PA mafia figure, Mr. Louis De Naples, despite numerous earlier protestations of his having ties to organized crime.

QUESTIONS RAISED

1.Are Kanofsky's affirmative defense claims valid, but are being disregarded by the court?

Kanofsky is citing fraud and corruption and thwarting of his activities by local non profits and government agencies, as reasons for his reduced business activity. Criminal activities such as extortion and bribes are apparently a large part of business activity as indicated in reports and litigation in Philadelphia and New York areas. The court, by its total disregard of Kanofsky's claims, apparently accepts these activities as normal business practices , thereby limiting business participants to those engaged in criminal illegal activities, thus severely limiting and biasing the pool of participants. As well, this has a impact on the development of neighborhoods and communities in this country. This has enormous legal and public policy ramifications.

2. Should Kanofsky's evidence be allowed – should the IRS attorneys be sanctioned for blocking and intimidating Kanofsky?

Kanofsky was originally deceived by the IRS attorney, Jackson, into believing that the court would accept his winnowed down evidence, even though it was presented within the 14 day period. As well the IRS attorney engaged in activities to prevent his preventing evidence on the day of the trial, such as occupying Kanofsky with other

activities, etc.

Eventually, Attorney Jackson left the service of the IRS, presumably for malfeasance and further improper activities. Kanofsky proposed impeaching Attorney Jackson Shortly after this, he left the service of the IRS. This has tremendous legal and public policy aspects.

3. Why are two years of his activity accepted as business activity while the other three years aren't

Nothing was different in Kanofsky's activities other than his neglecting to put the location of his main place of business on the top of the form, as stated as the reason by Attorney Jackson. This should be considered as a harmless error. This has enormous legal and public policy aspects.

4. Why aren't his claims of whistle blowing, high tech research and development, consulting, real estate development, etc. accepted as business activity?

The appellant was the first and major whistleblower in the UMDNJ case, which eventually led to UMDNJ being put under the supervision of a Federal Judge, Judge Herbert Stern. The appellant engaged in numerous research and development projects for profit, including working with the Department of the Navy, NASA, and the Department of Energy – yet the court totally disregarded this research work, the appellant owns the major real estate property next to Lehigh University and Bethlehem Steel, and yet the court totally disregarded his efforts to

develop and profit from the use of this property. He made numerous efforts and had numerous activities to develop and consult with companies.

Yet despite all of these business activities, the court totally disregarded these.

5. Does the courts' total disregard of the affirmative defense of criminal activity promote the activity and prevent honest people from developing their businesses? For Example, does this promote blight and decay in inner city areas.

The appellant encountered numerous corrupt and fraudulant activities, and his refusal to pay bribes and be extorted was totally ignored by the court. This lack of recognition of criminal activity by those involved supposedly in business promotion and development is what has resulted over the years in blight within our inner cities, and depressed the economy by discouraging business development.

6. In Kanofsky's requesting witnesses to testify as to the thwarting of activity by the local entities, the court blocked such witnesses. Kanofsky presented a motion to the Tax Court to hear testimony from such witnesses. Motion was denied.

Kanofsky made a motion to present witnesses who could testify on his behalf as to the criminal activities and thwarting of Kanofsky's and their own activities. Yet

the court denied his motion and attempts to present such witnesses.

7. Did the court ignore possible contributors and enablers to 9/11 activity? Again blocking discovery on this by not scheduling witness testimony, thus enabling the terrorists, operating under color of law, conspiracy, Rico, and retaliating for Whistle Blowing for exposing fraud and corruption

Has the court, by its actions enabled the 9/11 activity, and have they operated under color of law as well as conspiring to do so. Also, thave they retaliated against the appellant for whistle blowing and exposing fraud and corruption? The 9/11 Evidence that would have been presented by Kanofsky points to Lehigh Valley Entities exciting and encouraging the Arabs to resist Israel and have the Intifada and terrorist operations such as 9/11.

8. Court Blocked UPS case discovery, one of the biggest tax court cases ever. One of the principal entities blocking Kanofsky's activities, are Ms. Linny Fowler and Dr. Beall Fowler, a fellow Lehigh Univ. Physics Professor. Ms. Fowler's father and uncle the Oberkotters, were the heads of UPS during the period of the UPS actions under trial. Again, Kanofsky presented a motion on this, and this was denied by the court.

Ms. Linny Fowler, wife of one of the Physics Department faculty Prof. Bealle Fowler , is one of the

heirs of the UPS fortune. She is one of the principal philanthropists of the Lehigh Valley and is partnered with Mr. Jeffrey Parks, the appellant's next door neighbor, in running Musicfest and Artsquest , the main music and arts festival in Pennsylvania.

The Fowlers and the Parks have opposed the appellant's activity for several decades. The Fowlers and Mr. Parks are close friends with the governor.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	10
REASONS FOR GRANTING THE WRIT	17
CONCLUSION	22

INDEX TO APPENDICES

APPENDIX A – OPINION OF APPEALS COURT

APPENDIX B – DECISION TO DENY PETITION FOR REVIEW

APPENDIX C (SUPPLEMENT)– OPINION OF THE TAX COURT

OPINIONS BELOW

APPENDIX A — Appeals court decision of April 1

APPENDIX B — Decision to deny petition for Review by Court En Banc – June 4

APPENDIX C (SUPPLEMENT) – Tax Court Opinion-memorandum, April 18, 2006

JURISDICTION

A Tax Court Order for Tax Deficiency, on case Docket No.12547-04 was rendered on the case on November 17, 2006. The notice of appeal was filed in March 16, 2007 by the appellant, with the Third Circuit Court of Appeals, which later issued a notice that there was a question as to whether the appeal was timely filed. Kanofsky then filed supporting documents in April 2007 to argue that the appeal was filed within the 90 day period from when his Motion to Vacate or Reconsider Decision filed December 18,2006 was denied.

After a period of delay, due to supposed concerns over whether the appeal was timely filed, the Court of Appeals finally set a schedule in July for the submission of briefs., leaving the decision on timely filing to the Court. The appellant then filed an Informal Brief along with supporting documents to the Third Circuit Court of Appeals on August 14, 2007. The opposing party filed a reply brief two weeks after their originally set deadline , with Kanofsky filing a reply brief on October 15, 2007.

The Court Three Man Appeals Panel did rule that the appeal was timely filed, and they rendered a decision affirming the decision of the Tax Court on April 1, 2008 In this decision, the Court ignored many of Kanofsky's claims in the affirmative defense and business activity.

Kanofsky then petitioned for a en-banc rehearing on this decision on May 16, 2008. This Petition was denied by the court en banc on June 4, 2008. This is now an appeal from that final decision of the Third Circuit court of Appeals.

CONSTITUTIONAL AND OTHER STATUTORY CONSIDERATION

TABLE OF AUTHORITIES

Cases:

Ballard v. Commissioner
544 U.S. 40 (2005)

Cannoon v. Commissioner
949 F. 2d 345 (10th Cir. 1991)

Capital Video Corp. v. Commissioner,
311 F. 3rd 458 (1st Cir. 2002)

Commissioner v. Lincoln Sav. & Loan Ass'n – Also Cited by Appeals Court
403 U.S. 345 (1971)

Commissioner v. Tellier
383 U.S. 687 (1966)

Continental Illinois Corp. v. Commissioner,
57 T.C.M. (CCH) 1464 (1989)

Depauty v. du Pont
308 U.S. 488 (1940)

Drobnyu v. Commissioner

113 F. rd 670 (7th Cir. 1997)

Drobny v. Commissioner,
86 T.C. 972 (1983)

Goldsmith v. Commissioner
86 T.C. 1134 (1986)

Goodwin v. Commissioner,
75 T.C. 424(1980)

Independent Elec. Supply, Inc. v. Commissioner,
781 F.2d 724 (9th Cir. 1986)

Hardy v. Commissioner,
93 T.C. 684 (1989)

Hayden v. Commissioner.
889 F. 2d 1548 (6ty Cir. 1989)

Independent Elec. Supply, Inc. v. Commissioner,
781 F.2d 724 (9th Cir. 1986)

Interstate Transit Lines v. Commissioner,
319 U.S. 590 (1943) - Also Cited by Appeals Court

Jackson v. Commissioner,
864 F. 2d 1521 (10thy Cir. 1989)

Johnson v. Commissioner,
794 F. 2d 1157 (6th Cir. 1986) – Also cited by Appeals

Court

Joseph v. Commissioner,
106 F. 3d 1445 (9th Cir. 1997)

Little v. Commissioner,
106 F 3rd 1445 (9th Cir. 1997) – Also Cited by Appeals Court

Malmstedt v. Commissioner,
578 F. 2d 520 (4th Cir. 1978)

Moretti v. Commissioner,
77 F. 3d 637 (2d Cir. 1996)

Nagle v. Alspach,
8F.3d 141 (3d Cir. 1993)

National Starch and Chemical Corp. v. Commissioner
918 F. 2d 426 (3rd Cir. 1990)

PNC Bancorp, Inc. v. Commissioner,
212 F. 3d 822 (3d Cir. 2000)

Polack v. Commissioner,
366 F. 3d 608 (8th Cir. 2004)

Prof. Ins. Agents of Michigan v. Commissioner
726 F. 2d 1097 (6th Cir. 1984)

Richmond Television Corp. V. United States, - Cited by

Appeals Court
345 F. 2d 901 (4th Cir. 1965)

Somonosn v. United States.
752 F. 2d 341 (8th Cir. 1985)

Snyder v. United States,
674 F. 2d 1359 (10th Cir. 1982)

Van Der AA Investments, Inc. v. Commissioner,
125 T.C. 1(2005)

Welch v. Hervering,
290 U.S. 111 (1933)

Statutes and Regulations:

18 U.S.C. Sec. 242
18 U.S.C. sections 1961-68

Internal Revenue Code (26 U.S.C.)

Sec. 162 (a)

Sec. 6213(a)
Sec. 7442
Sec. 7482
Sec. 7483
Sec. 7453

Sec. 7491(a)(1)
Sec. 7502(a)

Treas. Reg. (26 C.F.R.):

Sec. 1.183.2(b)

Miscellaneous:

Federal Rules of Appellate Procedure:
Rule 13(a) (2)

Federal Rules of Evidence:
Rule 801(c)
Rule 802
Rule 803
Rule 804

Tax Court Rules:

Rule 104(c)(2)
Rule 131(b)
Rule 142(a)
Rule 142(a)
Rule 162
Rule 162

FROM APPEALS COURT DECISION

Also Citing

INDOPCO, Inc. v. Comm'r 503 I/S/. 79, 84 (1992)

Old Chief v. United States. 519 U.S. 172, 174 n.1 (1997)

Neonatology Asoc. P.A. v. Comm'r 299 F.3d 221 228 (3d Cir. 2002)

Whipple v. Comm'r, 373 U.S. 193, 202 (1963)

RICO, Retaliation for Whistle-blowing, Enabling statute, Under Color of Law, Violation of Civil Rights, Enabling Statute U.S.C. 18 2(b)
Kanofsky et al. vs. University of Medicine and Dentistry of New Jersey, et al 02-01818

Kanofsky and Kanofsky vs. Stark and Stark 06 -01654

EEOC case – Kanofsky vs. Lehigh University No. 530-2007-01356N

Acting under Color of Law 18 U.S.C. 242

STATEMENT OF CASE

Introduction:

Appellant claims that he engaged in business activity during the period from 1996-2000. He pursued real estate development, high technology research and development, high technology consulting, whistle blowing activity, and starting up independent businesses. He was thwarted and retaliated against in this activity by various entities – many operating under color of law, such as various non-profits in the area, and city and state agencies.

The IRS after examining the various tax returns for this period determined that there were substantial deficiencies for the first three years, but small deficiencies for the last two years. Kanofsky's activities were essentially identical for the entire period.

Kanofsky appealed these deficiencies to the Tax Court and a trial was held in March of 2005. He was denied bringing additional witnesses who would testify as to the thwarting of their own activities and the fraud and corruption present, as requested in his motions. As well, he made numerous affirmative defense claims of fraud and corruption.

As well, the IRS attorneys and the Tax Court blocked his presenting evidence, citing primarily the 14 day rule.

This was in spite of Kanofsky presenting voluminous documents for evidence well before the 14 day cutoff period, and then finally presenting the winnowed down documents just within the 14 day cutoff period. The Tax Court, after some minor adjustments ruled against Kanofsky's claims of being in business for the period during the first three years, but allowed that he was in business in the last two years. The court, as well, totally disregarded his claims of fraudulent and corrupt entities blocking his activity, and any affirmative defense. In most instances, the court supported these claims because of lack of evidence – the documents which they refused to allow in. Also, the court denied testimony from witnesses that Kanofsky wanted to call to support his claims of thwarting activity and fraud and corruption. As well, the court would not allow Kanofsky's motion to open the records of the UPS case for income tax evasion – the largest case to date. Here the main entity blocking Kanofsky's activities is Marlene (Linny) Fowler, whose father and Uncle were head of UPS during the period under consideration.

As well, there were additional documents, of new matter further supporting Kanofsky's contention of Fraud and Corruption, as for example cases against local and Philadelphia entities and individuals for fraud and corruption involving government activities.

With Regard to the Whistle blowing activity, Kanofsky presented numerous instances of fraud and corruption where whistle blowing was valid. The most prominent instance is the case of the University of Medicine

and Dentistry of New Jersey(UMDNJ), where Kanofsky was the first and most visible whistleblower in pursuing a Federal Case against UMDNJ for discharging his older brother who was in charge of monitoring the billing records of UMDNJ. In the new matter, UMDNJ was finally indicted by the FBI and department of Justice and accepted a Plea Agreement of Deferred Prosecution, where Judge Herbert Stern was installed as a monitor of the University's activities over a two year period. This case was previously submitted to the Supreme Court (02-01818 Kanofsky et al vs. UMDNJ et al.)for its consideration, but a Petition for a Writ of Certiorari by the court was denied. A later related case was also submitted (06—01654, Kanofsky and Kanofsky vs. Stark and Stark), but was also denied.

In later motions, Kanofsky tried repeatedly to have the evidence entered into the rec. rd, and finally, it was accepted as part of his Motion for Reconsideration of the Decision, but it certainly was not considered by the court.

Kanofsky appealed the Tax Court ruling to the Third Circuit Court of Appeals. This court ruled against Kanofsky, and then denied En Banc his Petition for Reconsideration of the ruling. The court ruled that Kanofsky had not presented any evidence to support his claims, and that he lacked credibility.(and had even made incendiary claims – of organized crime and homosexual dominance of the area?). This is now an appeal from that ruling. The case , the court claimed, presented by Kanofsky was based on just whether he was in business and whether he had presented evidence to that effect. In fact Kanofsky had made

numerous other claims, based on his being active in whistle blowing, affirmative defenses, etc.

In the time period from when Kanofsky submitted his appeal to the court of Appeals to when the Appeals Court finally ruled on the case, numerous additional instances of Fraud and Corruption have occurred. We list some of the most prominent:

1. The Louis DeNaples Case where the Owner applicant of one of the casinos in Pennsylvania, Mount Airy Lodge, was indicted for Fraud and Corruption, Perjury, etc. in his application, where he testified that he had no connection to Organized Crime in the Scranton area. In fact, he is one of the major figures in Organized crime, and this fact was hidden from the Casino Licensing Commission by the state and political figures.

2. Senator Vincent Fumo, the main Democratic Legislative Leader was indicted for fraud and corruption for extortion and improper activities with his non-profits, etc. His trial is scheduled for the Fall. He has stepped down as the Democratic Senate Leader. Fumo had earlier been responsible for secretly placing over $100 M in the state budget to move the Barnes Foundation in Merion, Montgomery County, to Philadelphia. The action against the Barnes to thwart its survival in Merion is similar to the concerted action against

the appellant. In fact, the head the board of trustees of the Philadelphia Museum of Art, the main proponent of moving the Barnes, (the Bermans) was one of the members of the board of Trustees of Lehigh University.

3. Most recently, the democratic state caucus leaders in Harrisburg were indicted for using taxpayer money and time to campaign for Democratic candidates in the state. This case involves numerous elected and appointed officials of the Democratic Party. The Democratic party leader, T.J. Rooney is located in Pennsylvania with his office only a block from the Appellant. Democratic party members have made numerous efforts to close down Kanofsky's activities.

4. Also, the head of the Allentown symphony orchestra, Lou Pavledes, of which the local entities are major patrons, was indicted by the FBI for illegal activities of taking bribes from a contractor in Detroit.

5. A former prominent Lehigh Valley Business Man and the head of the Leonard Pool Health Care Trust of the local Lehigh Valley Hospital, William P. Ferretti, has been indicted for running a prostitution ring out of Pheonix, Arizona.

Again, in these cases, and numerous others not mentioned and previously mentioned in papers filed earlier, the evidence of the underlying organized crime activities in the state and its communities is evident.

To move things forward in trying to advance his activities, Kanofsky filed a Federal EEOC complaint against Lehigh University for age and religious discrimination(Case no. 530-2007-01356N)). Immediately after this was filed, the city sent a notice to Kanofsky that his building had violations and that they wanted entry. They subsequently forced entry and condemned the building, using a Administrative Search Warrant with numerous false claims. Kanofsky worked with the city inspector to eliminate all of the so called violations, but he did file a retaliation complaint against Lehigh University for their promoting the condemnation.

Some of the new matter was submitted to the courts in the original Tax Court Pleadings, to the Third Circuit Appeals Court and for its the Petition for review. The Tax Court and the Appeals Court have consistently ignored the new matter .

As stated above, in the period from the when the appeals court denied Kanofsky's appeal to the present, the entire state democratic party apparatus including several legislators, have been indicted for fraud and corruption. It is worth noting that the head of the state democratic party T.J. Rooney resides and works in

Bethlehem, and that Governor Rendell has numerous personal and political ties to Bethlehem and to Ms. Marlene (Linny) Fowler and Mr. Jeffrey Parks. Among other fraudulent and corrupt activities was the granting of the state Gambling License to a known mafia figure, Louis De Naples, despite numerous protestations of his having ties to organized crime.

REASONS FOR GRANTING THE WRIT

1. **The court should recognize Kanofsky's affirmative defense claims as valid.** Allowing fraud and corruption to run rampant, destroys a democratic government. This has a tremendous societal impact, since it means that only companies that co-operate with organized crime can establish themselves, and eliminates those companies that operate honestly. This case has enormous public policy and legal aspects

2. **The Court should recognize Kanofsky's whistle blowing claims as valid, and as a valid for profit activity.** Whistle blowing is recognized as a valid and protected activity. The government is retaliating for Kanofsky being a whistleblower, and retaliation is forbidden by law.This case has enormous public policy and legal aspects.

3. **The court should allow Kanofsky's evidence – since to not allow it in is a grave miscarriage of justice.** The court overstepped and exceeded its discretion by not allowing the evidence submitted by Kanofsky

in. As well, it should allow the introduction of new matter supporting the appellant's claims of fraud and corruption. The court erroneously states in their decision –

"The Court also did not err in denying Kanofsky's additional submissions which constituted inadmissible hearsay (handwritten notes and calculations)." As presented here, that was not the major part of the additional submissions.Again the inclusion of new material relevant to a case is provided by law. This case has enormous public policy and legal aspects.

4. **The court should recognize that the non-profits apparently work closely with organized crime to thwart any activity by honest-dealing companies.** Again, the court protects the non-profits and the criminal elements .The non-profits block economic development and activity since they rely on blight and poverty for a means to expand their physical plant and for government support.

   For example, the HUD grants usually go to non-profits which supply services to the impoverished areas. If there were no such areas, the federal funds would not be available. This case has enormous public policy and legal aspects, and a decision in favor of the appellant

would have a tremendous impact on economic development and inner city poverty. Thus, this case has enormous public policy aspects.

5. **The court should recognize that the local non-profits and other entities worked to support the intifada prior to 9/11, thwart Jewish and Israeli attempts at peace , and thus lent support to and helped enable the terrorist attacks.** The court attempted to suppress any evidence from witnesses testifying in support of these claims.

   The appellant had a list of witnesses that would have testified as to the local non-profits thwarting activity of Jews in Bethlehem and in the Middle East. The court denied the appellant the opportunity to present these witnesses. A ruling for the appellant would have enormous impact on peace in the middle east, and enormous public policy effects.

6. **The court denied the appellant the opportunity to review the UPS case – the largest Tax Fraud case ever prosecuted. The appellant's main antagonists, the Fowlers were the ones taking a major part in blocking the activities of the**

appellant. The wife, Linny Fowler is the daughter and niece of the former heads of UPS, the Oberkotters, at the time the fraud was perpetrated. The case has enormous public policy and legal aspects. As well, this case apparently opened the way for numerous other U.S. companies to operate off-shore, thereby eliminating paying their fair share of U.S. Taxes. Needless to say, a favorable ruling for appellant in this case this would have a major impact on the United States, and would be a major benefit to many of the small businesses and individuals which are carrying the major tax burden. Thus, this case has enormous public policy and legal aspects.

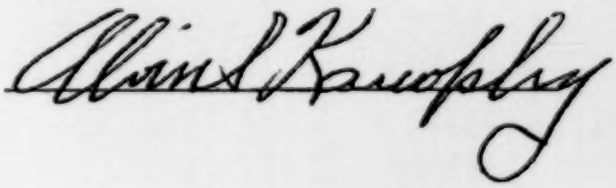
7. **The Courts continue to ignore the fraud and corruption prevalent in the area of Bethlehem and Pennsylvania.**

The numerous cases for fraud and corruption are increasing and developing as the appellant writes this petition. Where will it stop? And when will the government admit that there is a basis for the claims of Kanofsky. For example, the head of the state democratic party, T.J. Rooney, is right here in Bethlehem. His one uncle, Fred Rooney, worked with Bethlehem Steel to force out the Jewish merchants on Third street, in order to get the properties for Bethlehem Steel's expansion.

His father was a Bethlehem steel executive. The Chief Justice, John Roberts, is well aware of all of this history. Where will it stop? Is there no limit to the corruption of government? A ruling in the Appellant's favor will be a substantial step in reducing this corruption, and thus this case has enormous public policy effects.

CONCLUSIONS:

This case is of tremendous legal and public policy importance, for all of the reasons given above. The Petitioner respectfully requests that the U.S. Supreme Court grant his Petition for Writ of Certiorari.



Dr. Alvin S. Kanofsky

September 2, 2008

APPENDIX A

OPINION OF THE COURT

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 07 -1860

ALVIN S. KANOFSKY,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court

Tax Court No. 04-12547

Submitted Pursuant to Third Circuit LAR 34.1(a)

March 19, 2008

Before: SCIRICA, Chief Judge, HARDIMAN, and

STAPLETON, Circuit Judges

(Filed: April 1, 2008)

OPINION OF THE COURT

OPINION OF THE COURT

PER CURIAM

Dr. Alvin S. Kanofsky appeals, pro se, the decision of the United States Tax Court sustaining the determination of the Commissioner of Internal Revenue ("Commissioner") of deficiencies related to his federal tax retuirns for the years 1996 through 1998. For the reasons that follow, we will affirm the judgment of the Tax Court.

The parties' familiarity with the facts and procedural history is assumed. To summarize, Kanofsky, a full-time professor of Physics at Lehigh University filed individual tax returns in 1996 through 2000 where he reported , on Schedule C, Profit or Loss From Business, zero gross receipts, zero gross income, and substantial deductions from alleged business activities. In April 2004, the Commissioner sent Kanofsky a notice of deficiency ("notice) regarding additional federal; income taxes due for the 1996 through 2000 tax years and accuracy related penalties for 1997. This notice denied all of Kanofsky's 1996-98 Schedule C deductions and also denied a portion of his 1999 and 2000 deduictions.[1] These 1996 through 1998 dedials were based on the Commissioner's determination that Kanofsky was not engaged in a trade or business during those years and thus was not eligible to deduct

1 For each of these years, the Commisioner permitted some disallowed Schedule C deductions to be converted into Schedule A deductions applying to investment properties. Additionally, for 1999 and 2000, some schedukle C expenses were disalloed for lack of substantiation, but deductions were allowed for business expenses associated with Kanofsky's real estate properties.

his expenses. See I.R.C. Sec 162. For 1997, the IRS also determined that Kanofsky was subject to an accuracy-related penalty. See I.R.C. Sec 6662.

In July 2004, Kanofsky appealed these determinations to the Tax Court. The matter proceeded to trial, and the Tax Court issued a decision in favor of the Commissioner with some computational adjustments. First, the Tax Court sustained the Commisioner's denial of the 1006 through 1998 business expense deductions, determining that the evidence was insufficient to establish that Kanofsky was engaged in a trade or business during that period. Second, the Tax Court issued modifications to the deficiency determinations for 1997 through 1999 in order to address and correct minor computational errors. Third, the Tax Court sustained the 1997 accuracy-related penalty but reduced its amount. Thus, the Tax Court determined deficiencies in income tax paid – due to an increase in Kanofsky's taxable income – for 1996, 1997, 1998, 1999, and 2000 in the amounts of $14,506, $10,109, $10,055, $716, and $2,970, respectively; and an accuracy-related penalty, under I.R.C. Sec. 6662, due for 1997 in the amount of $431. Kanofsky filed a motion to vacate or revise the decision, which the Tax Court denied.Kanofsky's notice of appeal was timely filed [2]. In this appeal he claims

---

2 The Tax Court's decision was entered on November 17, 2006, and Kanofsky's motion to vacate was files on December 19, 2006. The record makes plain, however, that the motion to vacate was timely filed, extending the time in which Kanofsky could file a timely appeal. See Rule 162, Tax Court Rules of Practice and Procedure; See also Fed. R. App. P. 13(a)(2). The Tax Court entered its decision resolving the motion to vacate on December 20, 2006, sp Kanofsky had until March 20, 2007 to appeal. Kanofsky's notice of appeal was timely filed on March 16, 2007.

that the Tax Court: (1) improperly denied business expense deductions for 1996-1998 [3] and (2) abused its discretion in excluding certain evidence offered by Kanofsky at trial.

We have jurisdiction to review decisions of the Tax Court under 26 U.S.C. Sec 7482 (a) (1). We review the Tax Court's factual findings for clear error and exercise plenary review over its conclusions of law. Se PNC Bancorp v. Comm'r, 212 F. 3d 822,827 (3rd Cir. 2000). Tax deductions are a matter of legislative grace. See Interstate Transit lines v. Comm'r 319 U.S. 590, 593 (1943). Thus, the burden is on the taxpayer to show that the expenses are deductible. See INDOPCO Inc. v. Comm'r 503 U.S. 79, 84 (1992); See also Nat'l Starch and Chem Corp. v. Comm'r., 918 F 2d 426, 429 (3rd Cir. 1990). We review the Tax Court's rulings regarding the admission of evidence and stipulation of fact for abuse of discretion. (See Old Chief v. United States, 519 U.S. 172, 174 n.1 (1997) (the standard of review applicable to the evidentiary rulings of the trial court is abuse of discretion).

The Tax Court did not clearly err in finding that Kanofsky was not engaged in a trade or business in 1996-98. Section 162 (a) of the Intrernal Revenue Code permits a deduction for all ordinary and necessary expenses paid or

---

3 Kanofsky's appeal of the tax court's deficiency determination is somewhat circumscribed as his brief seeks only the reductions of deficiencies in 1996 through 1998 to amounts comparable to those allowed by the Commisioner in 1999 and 2000 where some, but not all of his deductions were permitted. For its part, the Tax Court noted that Kanofsky's evidence of business use for his three properties is no more convincing for 1999 and 2000 than it is for 1996-1998; however, the Commisioner did not disavow its previous decision not to challenge the 1999 and 2000 deductions at trial.

incurred during the taxable year in carrying on any trade or business." In order to deduct these expenses, however, five requirements must be met: "the item claimed as deductible (10 was paid or incurred during the taxable year;(2) was for carrying on a trade or business;(3) was an expense; (4) was a necessary expense; and (5) was an ordinary expense." See Neonatology Assocs., PA. v Comm'r 2999 F 3d 221, 228 (3rd Cir. 2002) (citing Comm'r v Lincoln Sav. & Loan Ass'n, 403 U.S. 345,352 (1971)). The concept of trade or business is a "concept which falls far short of reaching every income or profit making activity. Whipple v. Comm'r, 373 U.S. 193, 202 (1963) As the Supreme Court stated in Commissioner v. Groetzinger

> Not every income-producing and profit-making endeavor constitutes a trade or business. We accept the fact that to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and that the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity, a hobby or an amusement diversion does not qualify.

480 U.S. 23, 35(1987). Further, "courts have consistently held that section 162(a) does not permit current deductions for start-up or pre-opening expenses incurred by taxpayers prior to beginning business operations." Johnson v. Comm'r 794 F.2d 1157, 1160 (6th Cir. 1986); see also Richmond Television Corp v. United States, 341 F 2d 901, 907 (4th Cir 1965) (reasoning that a taxpayer is not "engaged in carrying on a trade or business within the intendment of section 162(a) until such time as the business has begun to

function as a going concern and performed those activities for which it was organized")

In his brief, Kanofsky argues that he was "active in business in high technology consulting, real estate development, and corporate start-ups and also in owning a music club, a flea market, and for whistle blowing" Further, according to Kanofsky, during the years 1996-2000... he was further developing ideas for companies, creating companies, and expanding on earlier research projects and ideas, developing patents , and protecting the company interests with law suits, etc. as well as using his building for business purposes and improving the building, such as with extensive renovations and improvements to the exterior" The problem, however, is that he neither produced documentary evidence nor witnesses to corroborate any of these contentions. But even taking Kanofsky's testimony and arguments at face value does him no service as there was no contention that he held himself out as providing goods or services of any kind to anyone. In fact, most of Kanofsky's testimony and appellate filings describe not how he went about conducting his own business, but how others went about conducting theirs. He describes in detail, much of it incendiary and not worth reprinting, how he has been thwarted from conducting his business by numerous third parties in Lehigh Valley, Pennsylvania. These arguments do not advance his cause. Moreover, as the Tax Court also surmised, Kanofsky's 1996 through 1998 Schedule C reporting showing zero gross receipts,but expenses which were greater than his only source of income, wages as a professor, for each year in question –

wholly supports a finding that he was not engaged in any trade or business during this period. Finally, Kanofsky argues that the Commissioner was inconsistent in that he ruled that Kanofsky was in business in 1999 and 2000, but not in business in 1996, 1997, and 1998, when he was engaged in essentially identical activity. We note on this point, Kanofsky may simply be equating inconsistency with benevolence. It is plain from the transcript of the Tax Court's hearing that Kanofsky's 1999 and 2000 returns would in all likelihood have suffered a similar fate as his 1996 through 1998 returns if the Commissioner had sought to challenge them.

Therefore, the Tax Court did not err in upholding the Commissioner's disallowance of the business expense deductions.

The Tax Court also did not abuse its discretion in excluding certain evidence presented by Kanofsky at trial. In its written opinion, the Tax Court noted that "during trial, (Kanofsky tried to place in evidence a number of documents in support of his argument that he incurred deductible business expenses during the years at issue. Most of these documents were not admitted into evidence, either because they constituted inadmissible hearsay, or because their admission into evidence would have violated the (court's)... so-called 14-day rule." We find, after reviewing the transcript, that the Tax Court acted within its discretion in excluding the untimely filed documents because they were not produced in accordance with the court's own procedural rule. See Sunik v Comm'r 321 F. 3d 335, 337 (2d Cir. 2003) Further, Rule 143(a) of the Tax

Court Rules provides in relevant, part, that trials before the Tax Court shall be conducted in accordance with the Federal Rules of Evidence. See also I.R.C. Sec.7453. The court also did not err in denying Kanofsky's additional submissions which constituted inadmissible hearsay (handwritten notes and calculations). Moreover, Kanofsky has not demonstrated what any of these documents would have added to his own testimony that same day. The transcript indicates that much of the evidence at issue was at best cumulative, and at worst irrelevant as it related to tax years not involved in the action before the court.

For the foregoing reasons, we will affirm the Tax Court's judgment.

April 1, 2008

APPENDIX B

Denial of Petition for Review

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 07 -1860

ALVIN S. KANOFSKY,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

(Tax Court No. 04-12547)

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge

SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN andSTAPELTON*,Circuit Judges.

The petition for rehearing filed by appellant to the above-entitled case having been submitted to the judges

who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing , the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/S/ Anthony J. Scirica
Chief Judge

Dated: June 4, 2008

CH/cc: Mr. Alvin S. Kanofsky
Richard Farber, Esq
John Schumann, Esq.